

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FELISA CAMPER	:	CIVIL ACTION
	:	
v.	:	
	:	
CHARANJEET S. DHILLON, et al.	:	NO. 03-05043-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 9th, 2004

Plaintiff was allegedly injured in an automobile accident on March 6, 2002. She filed suit in this court on September 8, 2003. No proof of service has been filed. Plaintiff's counsel was reminded of this defect, but took no further action. Accordingly, on May 17, 2004, I entered an order dismissing the case, as required by Fed. R. Civ. P. 4(m). The dismissal order provided, however, that if plaintiff could show cause within 20 days, the dismissal order would be vacated.

Nothing further occurred until September 10, 2004 - long after the expiration of the 20-day grace period - when plaintiff filed a motion "for substituted service." Needless to say, this motion made no sense: (1) the action had already been dismissed with prejudice; (2) no reason was given for excusing the earlier instances of non-performance; and (3) the motion set forth no valid basis for "substituted" service, given the apparent availability of the defendant to personal service (which had never been attempted, apparently).

On September 16, 2004, I filed a memorandum and order explaining why the motion for substituted service must be denied; but the order allowed plaintiff a further period of 30 days in which to attempt to justify reinstatement of the action. Thirty-two days later, on what was the last day of this grace period, plaintiff filed a motion to reinstate the complaint. Unfortunately, plaintiff still has not shown any basis for overlooking the earlier mis-steps.

It is alleged that on September 25, 2003, shortly after the complaint was filed, plaintiff's counsel mailed a copy of the summons and complaint to each of the defendants "pursuant to Rule 4(c)(2)(C)(ii) of the Federal Rules of Civil Procedure." No such rule has existed since 1993. Presumably, plaintiff's counsel was under the misapprehension that valid service could be made by mail, without obtaining a waiver of service from the defendant.

Instead of attempting to cause valid service to be made, counsel's efforts have been limited to attempting to obtain from the postal authorities some proof that the defendants actually received the letters which would not have constituted valid service in any event.

Plaintiff has advanced no reason for failing to remedy the defect in service when the Clerk's Office notified him of that problem. And, after the case was dismissed, plaintiff's

counsel made no effort within the time specified to obtain relief from the dismissal order.

On the present record, no effort has ever been made to achieve valid service of process upon the defendants. The statute of limitations expired on March 6, 2004. The situation is, in short, hopeless.

Plaintiff's motion to reinstate this action will therefore be denied.

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ORDER

AND NOW, this 9th day of November 2004, upon
consideration of plaintiff's motion to reinstate this action, IT
IS HEREBY ORDERED:

That the motion is DENIED.

The Clerk is directed to close the file.

BY THE COURT:

/s/ John P. Fullam, Jr. J.
John P. Fullam, Sr. J.